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Judith Lee Gardner

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EXAMINER

BROADHEAD, BRIAN J

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/976,989
Filing Date: October 12, 2001
Appellant(s): GARDNER ET AL.

Gary J. Cunningham
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 17, 2006 appealing from the Office action mailed November 12, 2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,249,720	Kubota et al.	6-2001
5,797,134	McMillan et al.	8-1998

6,487,500

Lemelson et al.

11-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 3-22, 24-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Kubota et al., 6249720.

As per claims 1 and 31, 36, Kubota et al. disclose receiving operating data from the vehicle relating to the vehicle operating condition on lines 65, on column 1, through line 8, on column 2; monitoring an interior portion of the vehicle and receiving operator activity data from the interior portion of the vehicle relating to activities of the operator within the interior portion on lines 29-30, on column 7; receiving vehicle environment data from the environment external to the vehicle on lines 31-35, on column 7; monitoring the vehicle operator and receiving operator condition data relating to a condition of the vehicle operator on lines 10-22, on column 13; recording an operator performance assessment based on the vehicle operating data, the operator activity data, the vehicle environment data and the operator condition data the operator performance assessment being a score assessing the ability of the operator to operate the vehicle relative to at least one of accepted good practices, previous driving performance, and habitual behavior on lines 40-56, on column 7, and lines 8-27, on column 9; and reporting the operator performance assessment to the operator on lines 11-15, on column 9.

As per claim 3, Kubota et al. disclose the reporting occurs during the operation of the vehicle on lines 11-15, on column 9.

As per claim 4, Kubota et al. disclose recording a first operator assessment relating to a first period of vehicle operation and recording a second operator performance assessment relating to a second period of operation and comparing the two on lines 62-65, on column 13.

As per claim 5, Kubota et al. disclose the step of receiving operator preference data, and wherein the step of recording an operator performance assessment comprises recording an operator performance assessment based on the operator preference data on lines 25-38, on column 19.

As per claims 6-8, Kubota et al. disclose the performance is representative of the operator skill and provides a visual indication on lines 10-29, on column 9.

As per claims 9-14, 32, Kubota et al. disclose the vehicle operating condition is vehicle speed or acceleration on line 50, on column 11; the operating condition is throttle application and throttle position, brake application and brake position, or steering wheel input and steering wheel position on line 51, on column 11.

As per claims 15-20, 33, Kubota et al. disclose the step of monitoring an interior portion of the vehicle comprises monitoring the usage of vehicle system controls, driving controls, telematic controls, comfort controls, infotainment controls, and communication controls by the operator on column 11.

As per claims 21-22 and 24, 34, Kubota et al. disclose monitoring a physical condition of the driver and the condition comprises fatigue and psychological condition on lines 10-22, on column 13.

As per claim 25, Kubota et al. disclose monitoring a distraction condition of the operator on lines 10-22, on column 13.

As per claim 26, Kubota et al. disclose monitoring vehicle passengers on lines 25-30, on column 12.

As per claims 27 and 28, Kubota et al. disclose environment data comprises road condition data on lines 5-8, on column 28, and environment data comprises road lane following data on lines 25-30, on column 11.

As per claims 29 and 30, 35, Kubota et al. disclose environment data comprises headway data on line 7, on column 2; and environment data comprises traffic data on lines 57-61, on column 6.

As per claim 37, Kubota et al. disclose exterior sensors comprise at least one of radar, laser, video, and sonar, on lines 30-33, on column 7.

As per claim 38, Kubota et al. disclose operator activity sensors comprise video on lines 29-31, on column 7.

As per claim 39, Kubota et al. disclose the feedback message comprises a pre-recorded message on lines 5-21, on column 8.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kubota et al., 6249720, in view of McMillan et al., 5797134.

Kubota et al. disclose the limitations as set forth above. Kubota et al. does not disclose reporting the operator performance assessment upon conclusion of vehicle operation. McMillan et al. teach of reporting the operator performance assessment upon conclusion of vehicle operation on lines 5-10, on column 10. It would have been

obvious to one of ordinary skill in the art at the time the invention was made to use the periodic reporting of McMillan et al. in the invention of Kubota et al. because such modification would allow the use of the driver assessment of Kubota et al. to improve extraction of selected insurance related data as stated on lines 47-60, on column 3, of McMillan et al.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kubota et al., 6249720, in view of Lemelson et al. 6487500.

Kubota et al. disclose the limitations as set forth above. Kubota et al. does not disclose the physical condition comprises intoxication. Lemelson et al. teach of determining the physical condition is intoxication on lines 22-43, on column 34. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the condition measuring of intoxication of Lemelson et al. in the invention of Kubota et al. because such modification would decrease the possibility of a collision in a dangerous or hazardous situation as stated on lines 38-40, on column 34.

(10) Response to Argument

Appellant's arguments are not persuasive. Appellant begins by stating on page 5 of the brief "*Kubota does not disclose any consideration of known good practices because Kubota does not disclose any qualitative or objective measurement of driving performance.*" It is difficult to assign any weight to this statement since known good practices are neither claimed nor disclosed in the specification as requiring "qualitative or objective measurement." Appellant tries to give meaning to this qualitative and objective measurement by reciting a narrow example of turning on wet pavement. But

once again, qualitative or objective standards are not part of the limitations in the claims or disclosed in the specification and it is impossible to determine the scope of what is meant by those terms.

It is helpful to look to the specification to determine exactly what meaning should be given to known good practices. On the bottom of page 5 through the top of page 6 of the specification, it is stated "the performance may be compared with accepted good practices, and a report may be provided to the operator indicating how the operator's performance compares with accepted good practices and/or with the operator's previous driving performance and/or habitual behavior." In light of this disclosure of how the driver performance is assessed, the limitation of claim 1 of "know good practices" is interpreted as being one of the accepted good practices, operator's previous driving performance, and habitual behavior. This view is further bolstered by Appellant's own claim 40 which recited before the amendment of August 26, 2004, "*known good practices comprises information on driving performance of a normal population, previous driving performance, or habitual behavior.*"

The cited reference of Kubota et al. discloses subject matter that reads on this interpretation of "known good practices". Kubota et al. discloses an invention that includes an agent that provides feedback to the driver of a vehicle based on the current status of the vehicle and the driver. In particular, Kubota et al. discloses on lines 10-28, on column 9, that the agent figure will stumble and fall when the driver brakes harder than what would be considered normal. The agent also takes into account the driver's past performance and if the driver has a habit of braking harder than what is considered

normal it will learn to ignore the hard braking and not fall over. Hence, the assessment starts with a normal base rating and changes as the habit of the driver is taken into consideration. This meets the limitation of "known good practices" as the term is interpreted from the specification.

Appellant further argues that this disclosure by Kubota et al. fails to indicate whether the driver's action is appropriate for the driving situation relative to an objective standard but, once again, this is not what is claimed. Based on the broadest reasonable interpretation of the claim language Kubota et al. reads on the invention. Appellant also argues that Kubota et al. may actually teach away from known good practices. But this argument is not convincing because of the definition given to the term known good practices by the specification. Appellant comments on the merits of the system disclosed by Kubota et al. and gives examples of instances where it might not work as intended. These examples are interesting but not very relevant because they do not show how the claimed invention differs from the prior art.

The Appellant also addresses the examiner's argument made in the Final Office action of November 12, 2004. In that argument, much like above, I pointed out that Appellant's own claims had defined known good practices as comprising information on driving performance of a normal population, previous driving performance, or habitual behavior. Appellant's response to that is "habitual behavior alone is not equivalent to known good practices, but may be considered along with other factors in determining know good practiced(sic)." I respectfully disagree with that statement. In writing a limitation of the form x comprises a, b, or c; x can take on any single one of a, b, or c,

and not require other factors. Appellant's own specification also uses "and/or" between driving performance of a normal population (accepted good practices), previous driving performance, and habitual behavior, on the top of page 6. This is interpreted to mean that not all of the factors are required, but any one or combination more than of the factors meet the definition of "known good factors".

The argument with respect to claims 2 and 23 also deals with what meaning to give "known good practices" and those limitations are recited as set forth above.

Appellant's final argument deals with the new matter rejection. Appellant points to page 13 of the specification for support for his amendment. While the specification does mention "good habits", this does not translate into disclosing good habitual driving behavior. An example of a good habit can using your turn signal, habitual behavior is a measure of a driver always using their turn signal. There is a strong difference. The specification seems to be using "good habit" as a synonym for "known good practice". The "driver's normal practice" mentioned later in the paragraph is more synonymous with the "habitual behavior" in the claim. There is not a "good" modifier associated with the disclosure of "driver's normal practice" in this section of the specification. Appellant's argument that the "good" of "known good practices" imputes good onto habitual behavior and previous driving is also not convincing. If that is what was meant when the specification was written then that is what would have been written. The words should be given their plain meaning.

(11) Related Proceeding(s) Appendix

Art Unit: 3661

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Brian J. Broadhead




Conferees:

Yonel Beaulieu



Thomas G. Black



THOMAS BLACK
SUPERVISORY PATENT EXAMINER